

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1814.01
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	October 9, 2001
DATE OF REPORT:	November 8, 2001
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	December 11, 2001

COMPLAINT ISSUES:

Whether the MSD Wabash County Schools and the Wabash-Miami Area Programs violated:

511 IAC 7-21-2(a) with regard to the school's alleged failure to utilize appropriately licensed personnel to provide instruction to students, specifically, utilizing a paraprofessional to provide instruction to students.

511 IAC 7-21-2(b) with regard to the school's alleged failure to ensure that the paraprofessional working with the student is working under the direct supervision of a licensed teacher.

511 IAC 7-17-72(1) with regard to the school's alleged failure to ensure the student's teacher of record provides direct or indirect services to the student in accordance with the student's individualized education program (IEP).

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's IEP as written, specifically:

- a. Failing to provide progress reports at the identified intervals;
- b. Failing to evaluate progress on goals and objectives as identified;
- c. Failing to implement accommodations, specifically,
 - i. Failing to read tests aloud in the special education classroom;
 - ii. Failing to provide access to a computer; and
 - iii. Failing to provide a "buddy" to accompany student to class;
- d. Failing to provide classroom instruction; and
- e. Failing to implement the goals and objectives for reading.

FINDINGS OF FACT:

1. The Student is thirteen years old and attends a local junior high school (the "School"). He is eligible for special education and related services as a student with a mild mental handicap.
2. The Student's teacher of record (TOR) is responsible for planning daily lessons for the Student. However, the TOR has no direct contact with the Student during the class periods of English, Health, and History. The Student is assigned to the paraprofessional in the special education classroom for all three subjects. The paraprofessional in the TOR's classroom implements all lesson plans and provides all the Student's academic instruction.
3. The organization of the classroom for instruction and use of the paraprofessional indicates that

direct supervision of the paraprofessional does not occur on a daily basis. The paraprofessional instructs a small group of students concurrently with the TOR instructing other students in the same classroom. The TOR does not rotate instructing the various student groups within the classroom.

4. The Student's current IEP, dated April 13, 2001, indicates that special education instruction and related services will begin August 14, 2001, when the Student began junior high school. The IEP contains an Individual Transition Plan which specifically calls for assistance and services in math, reading, written expression/spelling, and social studies from the MiMH (mild mental handicap) teacher, the Student's TOR. As noted above, the current classroom organization does not ensure that direct supervision of such assistance or services are provided the Student.
5. The School's mid-term progress reports for the general education population were issued on September 15, 2001. A copy of the Student's progress report was received by the Complainant on October 2, 2001, via registered mail. The IEP states that progress will be reported at mid-term.
6. During a meeting with the Local Special Education District Director (the "Director") on October 15, 2001, the TOR indicated he completed the Student's progress report without any input from the Student's math teacher. The IEP requires TOR observation and evaluation of progress in reading, written performance, and mathematics. The progress report was based solely on the indirect observation of the TOR in his classroom with no information included from other teachers assigned to the Student. When the TOR was posed with the question as to whether the Student's needs were being met in those subjects where the TOR is the teacher of service, his response was "probably not".
7. The Student's IEP states that as an accommodation tests are to be read aloud. During the meeting with the Director on October 15, 2001, the TOR indicated that he only provided the opportunity for the accommodation if the Student asked for his test to be read aloud, otherwise the accommodation is not implemented.
8. A case conference committee (CCC) meeting was held on October 17, 2001, where discussion took place concerning the utilization of a computer and software to help the Student take tests. The School's principal agreed to look into the matter and make a recommendation. A specific accommodation for the use of a computer is indicated on the Student's IEP, dated April 13, 2001 with implementation of the accommodation to begin August 14, 2001 through at least May 31, 2002.
9. The Student's IEP also specifies that there is to be a "buddy", or peer helper, assigned to accompany the Student to classes. No peer helper was assigned the first day of school August 14, 2001. A CCC meeting held on September 21, 2001, deemed it was no longer necessary for the Student to have a peer helper.
10. The TOR utilizes the Fearon Self-Directed Curriculum for all students regardless of individual needs. Lesson plans prepared by the TOR do not indicate any accommodations for student learning style. The curriculum is not designed to assess student progress on individual goals and objectives. All students work independently on the same packets that contain worksheets throughout most of a typical school week.
11. During the Student's class periods in the special education classroom, the independent work being done is based entirely on subject content. The progress report lists teacher observation as a method of evaluating student progress of reading and written performance. The TOR has no contact with the Student and the only written work done by the Student are worksheets and tests that do not reflect what the IEP requires. The paraprofessional gives the test, records the grade,

and returns it to the students. Finally, the TOR completed the progress report evaluating the math goals and objectives stated in the Student's IEP. The TOR is not the teacher of service for math, yet completed the progress report without observation or input from the teacher of service.

CONCLUSIONS:

1. Finding of Fact #2 and #3 indicate that all of the Student's academic instruction in the special education classroom for the subjects of health, English, and history is provided by a paraprofessional working in the special education classroom with the TOR. A violation of 511 IAC 7-21-2(a) is found.
2. Finding of Fact #2 and #3 indicate that, although the paraprofessional is in the "line of sight" of the TOR, there is no direct supervision where the Student's instruction is academic. A violation of 511 IAC 7-21-2(b) is found.
3. Finding of Fact #4 indicates that the Student's IEP stipulates academic assistance from the TOR. The special education classroom organization does not ensure that this type of assistance is being provided. A violation of 511 IAC 7-17-72(1) is found.
4. Finding of Fact #5 indicates that the School failed to implement the Student's IEP with respect to providing progress reports at mid-term. The Student did not receive a progress report on September 15, 2001, the same day that the general education population received mid-term progress reports. A violation of 511 IAC 7-27-7(a) with respect to providing progress reports at the identified intervals is found.
5. Finding of Fact #6 indicates that the School failed to evaluate the Student's progress toward goals and objectives as identified in the IEP. The IEP requires teacher observation as one method of evaluation of the Student's progress in reading, written performance, and mathematics. The progress report was based on the TOR's indirect observation of the Student. Furthermore, mathematics is taught to the Student by the teacher of service whose input is absent from the report. A violation of 511 IAC 7-27-7(a) with respect to evaluating progress on goals and objectives as identified in the IEP is found.
6. Finding of Fact #7 indicates that, as an accommodation in the Student's IEP, tests are to be read aloud. The TOR admits to only providing the opportunity to have test read aloud if the Student asks. A violation of 511 IAC 7-27-7(a) with respect to implementing the accommodation of reading tests aloud is found.
7. Finding of Fact #8 indicates that, as an accommodation in the Student's IEP dated April 13, 2001, use of a computer is required at the start of the school year, August 14, 2001, and implemented through May 31, 2002. A discussion at a CCC meeting on October 17, 2001, shows that recommended software for the Student to use on a computer has yet to be established. A violation of 511 IAC 7-27-7(a) with respect to implementing the use of a computer is found.
8. Finding of Fact #9 indicates that, as an accommodation in the Student's IEP, a peer helper or "buddy" was to be assigned to accompany the Student to classes when school began August 14, 2001. Such a peer helper was never assigned until a CCC meeting decision not to use one was made on September 21, 2001. A violation of 511 IAC 7-27-7(a) with respect to not providing a "buddy" to accompany the Student to class is found.

9. Finding of Fact #10 indicates that the curriculum chosen by the TOR and implemented by the paraprofessional is a standard curriculum provided to all students regardless of individual needs. The curriculum is based primarily on independent student work focused on subject content. The classroom instruction does not take into account individual learning styles nor is it designed to take into account assessing progress on the Student's goals and objectives. A violation of 511 IAC 7-27-7(a) with respect to providing classroom instruction is found.
10. Findings of Fact #6, #10, and #11 indicate that the School failed to implement the Student's goals and objectives for reading, written performance, and mathematics. The skills described in the Student's IEP for reading and written performance are not being addressed through the independent worksheet packets and tests administered by the paraprofessional that are the same for all students regardless of individual needs. The TOR has no contact with the Student yet evaluates progress based on observation, including observation of math achievement when mathematics instruction is provided by the teacher of service who has no input on progress. A violation of 511 IAC 7-27-7(a) with respect to implementing goals and objectives is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

MSD Wabash County Schools and Wabash-Miami Area Programs shall:

1. Convene a CCC meeting to revise the Student's IEP. The School must offer extended school year services and/or compensatory educational services to determine whether and to what extent they are required. The CCC meeting must also come to agreement on how the teacher of record will provide direct supervision of the paraprofessional when the Student is being academically instructed. A copy of the IEP and the CCC summary report shall be sent to the Division no later than December 7, 2001.
2. Provide in-service training to all teachers of record and special education paraprofessionals regarding (1) the duties and responsibilities of a teacher of record as required by Article 7, (2) review of Article 7 requirements regarding the use of paraprofessionals in special education, and (3) a review of the Article 7 requirements regarding the implementation of IEPs. The in-service training must provide the Student's teacher of record an opportunity to develop and write a plan on how to directly monitor the Student's IEP, provide technical assistance and consultation to the Student's other teachers and the paraprofessional. The School shall send notes, materials, handouts, and a copy of the attendance sheet in addition to the teacher of record plan to the Division no later than December 7, 2001.

DATE REPORT COMPLETED: November 8, 2001